for all those cases were either actions *against* Receivers, (in which case it is clear that the action could not lie as ousting the jurisdiction of the court)—or else the jurisdiction of another court had in some way already attached; while in the instant case the action was brought by the Receivers to assist them in acquiring possession of the premises wrongfully withheld.

The nearest approach to the case is that of *Grant* v. *Buckner,* 172 U. S. 232, where a receiver appointed by a federal court commenced suit in the state court to recover money alleged due him as receiver. In the state court the defendant pleaded a set-off against the receiver. It was objected that the state court had no jurisdiction to decide this set-off upon the ground that a set-off is in its essence and nature a suit against the plaintiff, and as the plaintiff was a receiver appointed by the federal court, that if the state court then decided the merits of the set-off, it would be tantamount to vesting the state court with jurisdiction to hear cases against a federal court receiver. The court, however, disposed of this objection, holding that the state court might determine the set-off *and that the state court had jurisdiction of the original suit brought by the receiver appointed by the federal court.*

See also: *Phoenix Ins. Co.* v. *Schultz,* (C. C. A.) 80 Fed. 337; *Hale* v. *Hardon,* 89 Fed. 283; *Chambers* v. *McDougall,* 42 Fed. 694; *Burch* v. *West,* 33 Ill. App. 359.

The Supreme Court in the instant case cites no authorities upon the proposition, but uses the following language disposing of the question, which it is submitted is eminently sound:

"No reason is given for refusing the plaintiffs the right to proceed in the courts of the state to recover possession. There is attempted no interference by the state court with the jurisdiction of the federal court over property in the hands of its receivers, or with funds in the control of the federal court. Defendant's right while it continued was a contract right, respected by the federal court and by its receivers. When this right expired, the right of the receivers to possess and deal with the property accrued. In face of an unlawful detention they needed a remedy. They have ratified the proceeding in the state court which their agent instituted. In principle, the case cannot be distinguished from an action of replevin."

W. W. M.

THE NECESSITY OF A DOMINANT ESTATE IN THE CASE OF EQUITABLE RESTRICTIONS.—In *London County Council* v. *Allen and Others,* [1914] 3 K. B. 642, the English Court of Appeals has limited the doctrine of *Tulk* v. *Moxhay.* 2 Ph. 774, in an interesting manner. The defendant's predecessor in title in the principal case had covenanted with the County Council not to erect any buildings on certain portions of his land in return for permission to lay out a certain road. The County Council, while it had a control over the land in this respect, obviously did not have an estate or interest in such land.

The possibility of the covenant running with the land was first eliminated because, as between covenantor and covenantee, it did not touch and con-

cern any land of the covenantee. *Austerberry* v. *Oldham Corporation.* (1885) 29 Ch. D. 750. Also in England contractual burdens are allowed to run with the land at law only in case of covenants between landlord and tenant. *Ibid.*

Plaintiff's claim to relief was rested mainly however on *Tulk* v. *Moxhay.* 2 Ph. 774, where a restrictive covenant was enforced in equity in favor of the covenantee against the derivative owner taking with notice. That case was based on purely equitable principles which the court in the principal case refused to extend. In refusing to enforce the restriction the Court made the absence of a dominant estate the turning point of its decision. This seems to be logically correct, inasmuch as the presumption is that the covenantee retains a negative easement to protect a remaining interest in some property. The court went on to say that "the fact of notice in that case is irrelevant," notice merely restricting the equity, not creating the easement.

The sparsity of opinion on this particular issue, as well as the fact that the two commonwealths in this country dealing with the question are distinctly opposed, compels attention to the analogy necessarily followed. On this the courts are significantly silent, the English court saying, "it does not matter whether it proceeds on analogy to a covenant running with the land or on analogy to an easement." This comes rightly from a jurisdiction which refuses easements in gross, *Rangeley* v. *Midland Ry. Co.,* 3 Ch. App. 306; *Ackroyd* v. *Smith,* 10 C. B. 164; *Tiffany on Real Property,* Vol 1, 685, and refuses to allow any contractual burdens, except in the case of leaseholds, to run at law. *Brewster* v. *Kidgill,* 12 Mod. 166; *Brewster* v. *Kitchin,* 1 Ld. Raym. 317; *Keppel* v. *Bailey,* 2 Mylne & K. 517; *Austerberry* v. *Oldham Corporation, supra.*

It is a singular circumstance that in this country the two states which have passed on this question, although opposed in their decisions, are alike in upholding easements in gross, *Goodrich* v. *Burbank,* 12 Allen (Mass.) 459, 90 Am. Dec. 161; *Willoughby* v. *Lawrence,* 116 Ill. 11, 56 Am. Rep. 758, and in virtually declaring that they will demand a covenant to run in favor of a dominant estate. Massachusetts in *Dana* v. *Wentworth,* 111 Mass. 291, supports the principal case while *Van Sant* v. *Rose,* 260 Ill. 401, is contra. The former is not copious with either reason or authority, while the latter is based on a case, *Hays* v. *St. Paul M. E. Church,* 196 Ill. 633, in which the court was not forced to pass upon this question. See 12 MICH. L. REV. 322. In a state where the question is one of first impression. the problem would seem to be essentially a fundamental one, namely, whether analogy, with its attendant evils, rigidity in particular. should control, or whether justice can be better accomplished with a rule based on the proper relation of such covenants to property in general.

Two points seem to have been overlooked in the principal case, i. e., the police power of the Council, and the fact that while there was no dominant estate, there was a dominant user. These two facts might easily justify a different decision. K. J. M.